

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 179 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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COMMISSIONER OF INCOME-TAX

Versus

FRITS MULLER THRO PAH

Appearance:

1. INCOME TAX REFERENCE No. 179 of 1991
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
-

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 18/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for the opinion of this Court in respect of assessment year 1981-82 :-

"Whether, on the facts and in the circumstances of the case and in law, the ITAT was right in holding that the living allowance of Rs.16,940/- did not constitute perquisite within the meaning of sec. 17(2) of the Income-tax Act, 1961 ?"

2. We have heard Mr BB Naik, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Mr Naik fairly points out that in CIT vs. SG Pgnatale, (1980) 124 ITR 391 and in CIT vs. H.Link, (2000) 244 ITR 93, this Court has taken the view that the living allowance given to the employee of a foreign collaborator is given as reimbursement rather than as a personal advantage and, therefore, it is not a perquisite which could be taxed under Section 17(2) of the Act.

4. In view of the above decisions, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-